IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 329 of 2005 (S/B)

Date of decision: 14th December, 2005

A.F.R. (Approved for Reporting)

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Not Approved for Reporting

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgement when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 329 of 2005 (S/B)

Dr. Gopal Singh Rawat,
Joint Director, Agriculture,
Garhwal Region, Pauri,
District Pauri Garhwal. …… Petitioner

Versus

1. State of Uttaranchal
through Secretary, Agriculture,
Govt. of Uttaranchal, Dehradun.
2. State of Uttaranchal,
Through Secretary, Karmik,
Govt. of Uttaranchal, Dehradun.
3. State of U.P.,
through Secretary, Agriculture,
Govt. of Uttar Pradesh, Lucknow.
4. State of U.P.,
through Secretary, Karmik,
Govt. of Uttar Pradesh, Lucknow.
5. State Advisory Committee,
through its Member Secretary,
Union of India, Nehru Stadium,
Gate No. 31, Lodhi Road, New Delhi.
6. Union of India,
through Secretary, Home,
New Delhi.
7. Sri Madan Lal,
at present posted as Joint Director,
Agriculture Directorate,
Uttaranchal, Nanda ki Chowki,
Prem Nagar, Dehradun.
8. Sri C.S. Mehra,
at present posted as Joint Director,
Agriculture Directorate, Uttaranchal,
Nanda ki Chowki, Prem Nagar,
Dehradun. …… Respondents

Mr. S.N. Babulkar, Senior Advocate assisted by Mr. Arvind Vashishth, learned counsel for the petitioner.

JUDGMENT

Coram: Hon'ble Cyriac Joseph, C.J.
Hon'ble P.C. Pant, J.

CYRIAC JOSEPH, C.J. (Oral)

1. The Petitioner is a Joint Director of Agriculture serving the Government of Uttaranchal. He has filed this writ petition praying for the following reliefs:

"i. A writ, order or direction in the nature of Certiorari quashing the order dated 1.7.2004 passed by Advisory Committee, Nehru Stadium Gate No. 31 Lodhi Road, New Delhi (Annexure No. 18).
ii. A writ order or direction in the nature of Mandamus commanding the Respondent No. 1 to not to treat the Respondents No. 7 and 8 as finally allocated to State of Uttaranchal and to relieve them for state of U.P.
iii. Any other Writ, Order or Direction, which this Hon'ble High Court may deem fit and proper in the facts and circumstances of the case.
iv. Award cost of the petition to the Petitioner."

2. The first prayer is for quashing Annexure 18 order dated 01.07.2004 passed by the fifth respondent State Advisory Committee rejecting the representation of the petitioner in which he had claimed that respondents Nos. 7 and 8 Sri Madan Lal and Sri C.S. Mehra were liable to be relieved from the State of Uttaranchal and sent to the State of Uttar Pradesh, as they had not been finally allocated to the State of Uttaranchal. Challenging the same order dated 01.07.2004 of the State Advisory Committee and raising identical contentions, the petitioner had earlier filed Writ Petition No. 296 of 2004 (S/B) in this Court and it was dismissed by this Court on 21.09.2004, as per Annexure 19 judgment. It is seen from the said judgment that, though the Court took the view that the writ petition was not maintainable in view of the availability of an effective alternative remedy to the petitioner under the U.P. Public Services (Tribunal) Act, 1976, the Court proceeded to decide the writ petition on merits also, as the learned counsel for the petitioner submitted that he had no instructions to withdraw the writ petition for approaching the Tribunal. While considering the case of the petitioner on merits, the Court found that the Advisory Committee, while rejecting the representation of the petitioner, had held that not only the petitioner but also Sri Madan Lal and Sri C.S. Mehra had been finally allocated to the State of Uttaranchal vide Government of India Order dated 11.09.2001. The Court also found that, according to the State Advisory Committee, the

petitioner as well as Sri Madan Lal and Sri C.S. Mehra had been appointed in the Hill sub-cadre and they were optees of Hill Sub-cadre for the State of Uttaranchal. Notwithstanding the very serious objection taken by the learned counsel for the petitioner against the observation of the State Advisory Committee that the petitioner had admitted that the appointments of Sri Madan Lal and Sri C.S. Mehra were made in the Hill Sub-cadre and that they were optees of Hill Sub-cadre for the State of Uttaranchal, the Court held that as Sri Madan Lal and Sri C.S. Mehra were actually appointed in the Hill Sub-cadre any they continued to serve as Hill Sub-cadre Officers in Class II posts, there was no necessity on their part to make any option for the State of Uttaranchal and that by reason of the proviso to Rule 6(1) of the U.P. Hill Sub-Cadre Rules, they stood included in the Hill Sub-cadre finally. The Court declared that the impugned order dated 01.07.2004 was absolutely correct and that there was no merit in the writ petition. Accordingly, the writ petition was dismissed.

3. Thereafter, the petitioner filed Civil Misc. Review Application No. 28 of 2005 for review of the judgment dated 21.09.2004 passed in Writ Petition No. 296 of 2004 (S/B). However, when the said review application came up for hearing, learned counsel for the applicant submitted that, in view of an order passed by the Central Government on 20.04.2005, the application had become infructuous and that a fresh cause of action had arisen to seek legal remedy for redressal of his grievance. In view of the above-mentioned submission of the learned counsel for the applicant, the review application was disposed of on 08.11.2005 as infructuous with liberty to the review petitioner to resort to the legal remedy available to him under law. Thereupon, the petitioner has filed this writ petition.

4. it is not disputed by the learned counsel for the petitioner that the order dated 01.07.2004 was challenged in Writ Petition No. 296 of 2004 (S/B). It cannot be disputed by him that the said writ petition was dismissed on merits upholding the impugned order dated

01.07.2004. It also cannot be disputed by him that, by the order passed on Review Application No. 28 of 2005, the finding in the judgment dated 21.09.2004 was not altered or modified. In such circumstances, the petitioner is not justified in filing another writ petition to challenge the very same order dated 01.07.2004 which was upheld by this Court in Writ Petition No. 296 of 2004 (S/B). However, Mr. S.N. Babulkar, learned senior counsel appearing for the petitioner submitted that a fresh cause of action arose enabling the petitioner to file this writ petition. According to the learned counsel, the fresh cause of action is Annexure 20 order dated 20.04.2005 passed by the Government of India publishing the Final Allocation List of State Service Personnel of Agriculture Department to the State of Uttaranchal. It is stated that the Final Allocation List annexed to the said Government Order dated 20.04.2005 does not contain the names of respondents Nos. 7 and 8 and therefore, the said respondents should be treated as persons not allocated to the State of Uttaranchal and therefore, they should be relieved from the State of Uttaranchal. There is no merit in this contention because the allocation of respondents Nos. 7 and 8 to the State of Uttaranchal is independent of the Final Allocation List annexed to the Government Order dated 20.04.2005. Respondents Nos. 7 and 8, being members of the Hill Sub-cadre, stood already allocated to the State of Uttaranchal as per Government of India order dated 11.09.2001 as pointed out in Annexure 19 judgment of this Court. In their case, no fresh allocation to the State of Uttaranchal is necessary. The persons allocated to the State of Uttaranchal as per Annexure 20 Government Order dated 20.04.2005 are in addition to the persons who stood allocated to the State of Uttaranchal as members of the Hill Sub-cadre. If the petitioner has a dispute regarding the right of respondents Nos. 7 and 8 to be treated as members of Hill Sub-cadre, that dispute should have been raised and agitated in the earlier writ petition. Even if such a dispute had been raised and agitated in the earlier writ petition and if the dispute was not either considered by the Court or was wrongly decided by the Court, the remedy available to the petitioner is to

challenge the decision and judgment in the earlier writ petition and not to file a fresh writ petition. In this view of the matter, we are not inclined to entertain a fresh challenge by the writ petitioner against the order dated 01.07.2004 of the State Advisory Committee in this writ petition.

5. The second prayer is for a direction to respondent No. 1 not to treat respondents Nos. 7 and 8 as finally allocated to the State of Uttaranchal and to relieve them for the State of Uttar Pradesh. This relief is dependent on the first relief and is on the assumption that respondents Nos. 7 and 8 were not finally allocated to the State of Uttaranchal. This relief cannot be granted in view of the discussion in the earlier paragraph. We have already found that they stood allocated to the State of Uttaranchal, as per Government of India order dated 11.09.2001.

6. In the light of the discussion above, we do not find any merit in the writ petition. Hence, the writ petition is dismissed in limine.

(P.C. Pant, J.)
14.12.2005

(Cyriac Joseph, C.J.)
14.12.2005

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